



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,837	06/27/2003	Thomas M. Hayes	14416	8461

25763 7590 10/16/2006

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-1498

EXAMINER

SAYALA, CHHAYA D

ART UNIT PAPER NUMBER

1761

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,837

Applicant(s)

HAYES ET AL.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites in its preamble a method of raising swine; however the steps that follow step 1, recite a series of steps that conclude by reciting making bacon slices, rendering this claim indefinite. It cannot be said that a method of raising finishing swine translates into slicing bacon slices.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Livingston (US Patent 6033176) and Johnston (US Patent 5498434) in view of admitted prior art in the specification at page 1, paragraph [002] and Cook (US Patent 5851572) and further in view of Evans et al. (US Patent 5427802) and Schaub (US

Art Unit: 1761

Patent 5215766) taken with Swine Diet Recommendations (1994, downloaded from <http://www.aces.edu/pubs/docs/A/ANR-0639>) and Practical Swine Feeding Ideas (1995, downloaded from [http:// www.animalgenome.org/edu/PIH/prod_growing.html](http://www.animalgenome.org/edu/PIH/prod_growing.html)).

Livingston teaches animal feeds that contain poultry fat (see abstract). Johnston also teaches fat containing animal feeds and teaches use of poultry fat (see col. 2, line 51). Both references do not teach hydrogenating fats. Schaub teaches hydrogenating fats. Schaub teaches that high fat feeds or rations, used in animal feeds, provide energy needs of animals, and includes fats such as lard, tallow etc. The patentee teaches that when non-hydrogenated fats of high natural melting point are used, they are not hydrogenated. However, if the fats are of a low melting point variety, they are hydrogenated (i.e. have melting point lower than the body temperature of the animal being fed). Using such hydrogenated fat is said to improve the quantity and quality of the feed (see col. 5, lines 4-19).

It is known in prior art that the firmness of pork belly is obtained by providing saturated fats in the diet of a pig (see page 1 of specification that discusses what is known in prior art). See also col.1, lines 34-35 in Cook. In fact, Evans et al. teach that to improve carcass firmness and quality, feeding highly saturated fats to animals is beneficial. The patentees teach that the highly saturated fats should have an iodine value in the range 5-35. Finishing pigs fed saturated fats in feed ration even for the last 3 weeks of the cycle resulted in acceptable levels of carcass firmness. The weight claimed in claim 4 obviously addresses that of a finishing pig, and this would have been

Art Unit: 1761

obvious to one skilled in the art who would have known that finishing pigs weigh from 125 pound upwards or thereabouts.

Based on the combination of the above references, it would have been obvious to hydrogenate even poultry fat, before feeding it to finishing swine since the primary references teach using poultry fat in animal feed and Evans et al in particular teach that finishing pigs benefited in carcass quality and firmness by being fed hydrogenated fats. As for the claimed iodine value, Evans et al teach that too, and to optimize such values would be within the realm of the artisan, since it is known that the iodine value is a means to measure the degree of saturation required and that the lower iodine value, the higher the hydrogenation. Furthermore, to mix in tallow, a known saturated fat and already used in animal feeds (Schaub), that contain grain (see Schaub, col. 4), would have been obvious to one of ordinary skill in the art, because to combine 2 ingredients known for their use for the same purpose is prima facie obvious. Claim 1 limitations/steps of slaughtering, injecting the pork belly, pressing the pork belly and slicing are all typical steps known in the art, as discussed on page 1 of the specification, which admits that these are typical process steps (see line 9). As for the amounts of fat in the feed, both the bulletin references report that the fat content of a typical feed is in the range 3-5% (page 2 of the 1994 reference) and the maximum level of fat in a swine diet is 8 (finisher diet), see page 15 of the 1995 reference. It would have been obvious to consider these amounts and optimize it, whether the fat is hydrogenated or not, since fat requirements would be the same.

Response to Arguments

Applicant's arguments filed 7/31/2006 have been fully considered but they are not persuasive.

Livingston has been criticized by applicant for 1) teaching the use of fat along with house litter, etc. and 2) for not teaching hydrogenated fat, or any of the other limitations. Livingston has been applied here as a reference that teaches using poultry fat in animal feed. Similarly, Johnston also teaches using poultry fat in animal feed. Applicant has criticized this reference also in the same way and goes further to state that Johnston teaches fat in animal feed, and more particularly in pet food. The "non-preferred" as well as the "preferred" portion of a reference is pertinent for what it teaches to one skilled in the art. *In re Meinhardt*, 157 USPQ 270 (CCPA 1968). Furthermore, the litter, etc. is not excluded by these claims. There is also no requirement under 35 USC 103 that a single reference must show *all* the limitations.

With regard to Schaub, this reference teaches the benefits of using hydrogenated fats in animal feeds. The other limitations are taught by admitted prior art in the specification, by Cook and certainly by Evans, all taken together. In fact, Evans teaches feeding hydrogenated fats to finishing pigs stating that this is highly beneficial. As for the new limitation of amounts of fat, prior art already prescribes this amount for finishing pigs. Applicant's extensive discussion of Evans with respect to the iodine value also has been carefully considered in view of distinguishing the instant invention for patentability purposes, but the range of Evans overlaps with the claimed range. Therefore, it must be said while applicant has clearly addressed each and every

Art Unit: 1761

reference for its lack of certain limitations claimed herein, applicant has improperly criticized the references individually where the rejection is based upon the combined teachings of the references. *In re Merck, Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Unobviousness cannot be established by attacking references taken individually when rejection is based on a combination of references. *Ex parte Campbell* 172 USPQ 91 (BPA&I 1971). Test for combining references is not what individual references themselves suggest but what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1970).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1761

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.